(2) Where test product storage areas or facilities are concerned, "operating hours" means all times during which personnel, other than custodial personnel, are at work in the vicinity of the area or facility and have access to it.

(3) Where other facilities or areas are concerned, "operating hours" means all times during which products are being manufactured or assembled; or all times during which products are being tested or maintained; or records are being compiled; or when any other procedure or activity related to labeling, selective enforcement auditing, or product manufacture or assembly being carried out.

(4) "Reasonable assistance" means providing timely and unobstructed access to test products or to products and records that are required by this part, and the means for copying those records or the opportunity to test the test products.

(e) The manufacturer must admit an EPA Enforcement Officer who presents a warrant authorizing entry to a facility or site. If the EPA officer does not have the warrant, he may enter a facility or site only if the manufacturer consents.

(1) It is not a violation of this regulation or the Act if anyone refuses to allow an officer without a warrant to enter the site.

(2) The Administrator or his designee may proceed *ex parte* (without the other party's knowledge) to obtain a warrant whether or not the manufacturer has refused entry to an EPA Enforcement Officer.

(Secs. 11 and 13, Pub. L. 92–574, 86 Stat. 1242, 1244 (42 U.S.C. 4910, 4912))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

§ 211.110 Exemptions.

§ 211.110–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the produce itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57716, Dec. 28, 1982]

§ 211.110–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for a national security agency, but distributed in commerce for other uses.

[47 FR 57716, Dec. 28, 1982]

§ 211.110–3 Export exemptions.

(a) A new product intended solely for export, and which has satisfied the requirements of other applicable regulations of this part, will be exempt from the prohibitions of section 10(a) (3) and (4) of the Act.

(b) Requests for an export exemption are not required.

(c) For purposes of section 11(d) of the Noise Control Act, the Administrator may consider any export exemption under section 10(b)(2) void from the beginning if a new product, intended only for export, is distributed in commerce in the United States.

(Sec. 10(b)(2), Pub. L. 92–574, 86 Stat. 1242 (42 U.S.C. 4909(b)(2)))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

§ 211.111 Testing by the Administrator.

(a)(1) To determine whether products conform to applicable regulations under this part, the Administrator may require that any product that is to be

tested under applicable regulations in this part, or any other products that are regulated under this part, be submitted to him, at a place and time that he designates, to conduct tests on them in accordance with the test procedures described in the regulations.

(2) The Administrator may specify that he will conduct the testing at the facility where the manufacturer conducted required testing. The Administrator will conduct the tests with his own equipment.

(b)(1) If, from the tests conducted by the Administrator, or other relevant information, the Administrator determines that the test facility used by the manufacturer(s) does not meet the requirements of this part for conducting the test required by this part, he will notify the manufacturer(s) in writing of his determination and the reasons for it.

(2) After the Administrator has notified the manufacturer, EPA will not accept any data from the subject test facility for the purposes of this part, and the Administrator may issue an order to the manufacturer(s) to cease to distribute in commerce products that come from the product categories in question. However, any such order shall be issued only after an opportunity for a hearing. Notification of this opportunity may be included in a notification under paragraph (b)(1) of this section. A manufacturer may request that the Administrator grant a hearing. He must make this request no later than fifteen (15) days (or any other period the Administrator allows) after the Administrator has notified the manufacturer that he intends to issue an order to cease to distribute.

(3) A manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(1) of this section, if he can provide data or information which indicates that changes have been made to the test facility, and that those changes have remedied the reason for disqualification.

(4) The Administrator will notify a manufacturer of his decision concerning requalifying the test facility within 10 days of the time the manufacturer requested reconsideration under paragraph (b)(3) of this section.

(c)(1) The Administrator will assume all reasonable costs associated with shipment of products to the place designated pursuant to paragraph (a) of this section, except with respect to:

(i) [Reserved]

(ii) Testing of a reasonable number of products for purposes of compliance audit testing under the Section titled Compliance Audit Testing of the product-specific Subpart, or if the manufacturer has failed to establish that there is a correlation between his test facility and the EPA test facility or the Administrator has reason to believe, and provides the manufacturer with a statement or reasons, that the products to be tested would fail to meet their verification level if tested at the EPA test facility, but would meet the level if tested at the manufacturer's test facility;

(iii) Any testing performed during a period when a notice issued under paragraph (b) of this section, is in effect; and

(iv) Any testing performed at place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this part.

(Secs. 11 and 13, Pub. L. 92–574, 86 Stat. 1243 (42 U.S.C. 4910, 4912))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

Subpart B—Hearing Protective Devices

AUTHORITY: Sec. 8, Pub. L. 92–574, 86 Stat. 1241 (42 U.S.C. 4907), and additional authority as specified.

SOURCE: 44 FR 56139, Sept. 28, 1979, unless otherwise noted.

§ 211.201 Applicability.

Unless this regulation states otherwise, the provisions of this subpart apply to all hearing protective devices manufactured after the effective date of this regulation. (See § 211.203(m) for definition of "hearing protective device.")

§ 211.202 Effective date.

Manufacturers of hearing protectors must comply with the requirements set